In the

United States Circuit Court of Appeals

For the Ninth Circuit

No. 4840

WONG FOOK JUNG, Appellant

vs.

LUTHER WEEDIN, as Commissioner of Immigration at the Port of Seattle, Washington, Appellee

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

HONORABLE GEORGE M. BOURQUIN, JUDGE

Brief of Appellee

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STATEMENT OF THE CASE

The appellant, WONG FOOK JUNG, arrived at the port of Seattle, Washington, on the steamer "President Jefferson" September 26, 1925, and applied for admission into the United States as a na-

tive-born citizen of this country. He claimed to be thirty-nine years old and to have been born in Portland, Oregon, on a Chinese date equivalent to December 11, 1886. He also claimed to have a wife and four sons in China.

The appellant was accorded a hearing before a Board of Special Inquiry at Seattle, Washington, October 13, 1925. Thereafter statements were taken at Portland, Oregon, from an alleged paternal uncle, Wong Tee Doy, Wong Tee Doy's alleged wife, Hom Ngook, an alleged first cousin named Wong Wah, another Chinese named Jong You, and a white man named William P. Swope. After receipt of this testimony from Portland, Oregon, the appellant was given another hearing before the Board of Special Inquiry at Seattle, Washington, at which time he was granted ten days in which to introduce such further evidence as he might desire in support of his claim of birth in this country. The ten days privilege was subsequently waived by appellant's counsel and thereafter, on November 19th, 1925, the appellant was excluded by a unanimous vote of the Board of Special Inquiry for the reason that the evidence did not prove that he was the son of his alleged father, WONG NGAH YICK, or that he was born in this country; also for the further reason that he was *an alien ineligible to citizenship* and inadmissible under

the Immigration Act of 1924. Thereafter appellant appealed from this decision to the Secretary of Labor at Washington, D. C. His appeal was dismissed and appellant ordered deported to China. Thereafter, he filed a petition for a writ of habeas corpus in the United States District Court for the Western District of Washington, Northern Division. The case now comes before this court on appeal from the decision of the District Court denying said petition.

ARGUMENT

There Is No Question of Law in This Case

The attorney concedes that the only question at issue is one of fact, but contends that the evidence proves the American nativity of the appellant without question and that the excluding decision of the Immigration officials "is based upon suspicion and conjecture, and not upon any evidence," and is therefore subject to review by the courts. He also practically charges that the appellant was excluded by the immigration officials on account of a prejudice they have against WONG TEE DOY, and his alleged relatives, because WONG TEE DOY, appellant's alleged uncle, and WONG WAH, an alleged son of Wong Tee Doy, were denied admission years ago, and afterwards granted writs of habeas corpus

by District Courts. No evidence to warrant any such charge against the immigration officials appears in the record.

The evidence which was before the Board of Special Inquiry and the Department of Labor at Washington consists of the statements of the appellant and witnesses named above and the contents of Seattle files 4010/11-12, 35680/1-3, 35680/3-9, 3460/14-9, 2133/2-6, 30/311, 27710, and 4010/12-4, relating to Wong Tee Doy, Hom Ngook, alias Mrs. Wong Tee Doy, Wong Nung, Wong Wah, Jon Yo, Wong Wing, Wong Foo and Wong Sun, respectively.

The claim was set up that the appellant is a son of WONG NGAH YICK (or WONG GAR YICK), a brother of WONG TEE DOY, and was born at No. 311 Alder Street, Portland, Oregon, December 11, 1886; that the families of Wong Tee Doy and Wong Ngah Yick lived at that address, upstairs over the FOOK LEE store; that Wong Tee Doy had a wife and three sons and Wong Ngah Yick a wife and two sons, the appellant and WONG SEUNG, a year older than appellant; that Wong Ngah Yick took his own family and Wong Tee Doy's family to China in 1888; that WONG NGAH YICK subsequently returned to the United States and died somewhere in this country between ten and eighteen years ago.

The statements of witness WILLIAM P. SWOPE fall far short of being convincing. He claims to have a vague recollection of some Chinaman named Wong, who he thinks was a brother of Wong Tee Doy, living somewhere on Alder Street, between 5th and 6th Streets, Portland, and that said Chinaman had two boys, one two or three years old and the other smaller. He has no recollection of ever having seen any other children there. In this connection it will be noted that Wong Tee Doy claims to have lived at the same address and to have had three sons, *which would have made a total of five children living there.* The whole statement of this witness would seem to indicate that it is probably the result of suggestion on the part of Wong Tee Doy.

Witness JONG YOU claims to remember having seen WONG NGAH YICK only once and states that said occasion was about 22 years ago. He states that he first saw the appellant about 16 years ago, in China. Consequently he has no personal knowledge regarding appellant's birthplace. *He also could not identify appellant's photograph, although he claims that he saw him less than three years ago.*

Witness HOM NGOOK, alias Mrs. Wong Tee Doy, never saw Wong Ngah Yick and states that she never saw the appellant until about nine years ago. She

claims that Wong Tee Doy and appellant told her that Wong Ngah Yick was appellant's father, and that appellant's mother told her that appellant was born in the United States. That is about all her testimony amounts to.

Witness WONG TEE DOY claims that, after taking his own family and Wong Tee Doy's family to China in 1888, his brother, WONG NGAH YICK, *remained in China until 1902*, when he returned to this country. This statement is corroborated by Wong Tee Doy's alleged son, WONG WAH. THE APPELLANT states that *his father returned to the United States when he* (*appellant*) *was three or four years old, and that he has never seen him since*, whereas he must have been *at least fifteen years of age in 1902.*

Witness WONG TEE DOY stated March 19, 1900, that his wife and three children accompanied his brother, Wong Gai Yick, to China in December, *1889*, and made no mention of his brother's family accompanying him, or of his brother having any family. He also stated that there were other Chinese families living at Sixth and Alder Street, Portland, at that time, *but did not remember who they were. If his own brother's wife and two sons had lived there, why did he make this statement?* (See Seattle 3460/14-9.)

Witness WONG TEE DOY testified as follows in 1918 (Seattle 35680/1-3):

"Q. Have you any brothers or sisters?
"A. No.
"Q. Did you ever have a brother?
"A. Yes; I had a brother but he has been dead a good many years.
"Q. Did he leave any family?
"A. No."

WONG NUNG, an alleged son of this witness and an applicant for admission at that time, also testified as follows:

"Q. Did your father ever have any brothers or sisters?
"A. One brother; no sisters.
"Q. Where is that brother? What is his name?
"A. I don't know his name; he is dead; I never saw him.
"Q. Did your father's brother leave any family?
"A. No."

The attorney designates the foregoing testimony as the deciding point in the case and concludes that, when WONG TEE DOY stated that his brother did not leave any family, he did not mean that he did not leave any family WHEN HE DIED, *but meant that he did not leave any family in the United States when he went to China in 1888.* Considering the questions and answers immediately preceding, it must have required the exercise of considerable imagina-

tion and ingenuity to have been able to arrive at this conclusion. Such reasoning is too far-fetched for the writer.

If it were reasonably possible that Wong Tee Doy's statement could be construed to have the meaning assigned to it by the attorney, WHAT DID WONG NUNG MEAN when he stated that his father's brother was dead; that he never saw him; *that he did not know his name, and that he did not leave any family?* WONG NUNG was only fourteen years old and had never been to the United States. Did his mind naturally hark back also to the alleged departure of his alleged uncle from the United States for China thirty years previously, long before he was born? WE DO NOT THINK SO. If the appellant and a brother, Wong Seung, had been living in the same village in China with this boy all his life, and were sons of his father's brother, as is claimed, is it conceivable that, when he was questioned as above set forth, this boy would not have mentioned them and have known the name of their father? The only reasonable construction to be placed on his statements is that THERE WERE NO SUCH PERSONS THERE.

So far as we know the Immigration Service is in possession of no record whatever relating to WONG

NGAH YICK, appellant's alleged father, and consequently *we have no statement by him* as to whether or not he was ever married or ever had any children. *There is also no official record that he ever was in this country.* The appellant claims that he died somewhat over ten years ago and WONG TEE DOY states that he died seventeen or eighteen years ago. Neither has any definite knowledge as to when or where he died. According to their statements his bones have never been sent to China, in accordance with the usual Chinese custom. NOT AN IOTA OF EVIDENCE HAS BEEN PRODUCED THAT HE IS DEAD except the statements of these people that they have not heard from him for the number of years stated. If this man died in the United States, as is claimed, 10 years ago, or 17 or 18 years ago, it is a natural supposition that, wherever he died, he would have had some friends or acquaintances who would have notified his family in China of his death and, IF HE IS DEAD, the fact that the appellant has never received any notification regarding the particulars of his death is, in itself, strong evidence that the appellant is not his son. IF HE IS NOT DEAD, the BEST EVIDENCE of appellant's claim has not been produced.

The character of the alleged uncle, WONG TEE DOY, and his regard for the laws of this country,

of which he claims to be a citizen, are evidenced by the fact that, although he has a wife in this country, he admits that he married another woman on his last trip to China last year.

The following quotation from District Judge Bourquin's decision denying the writ of habeas corpus shows his opinion of this case:

* * *

"Without adverting to familiar rules, it suffices to say that the Immigration authorities' refusal to credit the testimony of petitioner and his two material or vital witness-relatives was exercise of their judgment and of their exclusive function, with which the courts in habeas corpus cannot interfere.

"They found that the present statements on oath of the alleged relatives that the petitioner was the son of Wong Gar and born in 1886 were opposed by their like statements in 1918 that Wong Gar died without family, and petitioner's credibility is impeached by interest.

"The immigration officers saw and heard the witnesses and, even as any triers of facts in such circumstances, their refusal to credit the testimony is final. No court can insist they shall believe where their reason refuses to believe. As matter of fact were this court free to determine the facts for itself, the very best it could say for the petitioner is that he has not sustained the burden of proof of his right to enter this country.

* * *

"Incidentally these efforts to secure entry of endless chains of Chinese sons—of sons of sons ad in-

finitum (petitioner has four born and yet in China) might receive a salutary check by perjury proceedings, to which said relatives at least seem to have laid themselves fairly open."

It is maintained that the District Court did not err in denying the writ of habeas corpus in this case and that its decision should be AFFIRMED.

Respectfully submitted,

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